

PUBLIC DOCUMENT

**BEFORE THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE**

**IN RE POTENTIAL ACTION UNDER
SECTION 203 OF THE TRADE ACT
OF 1974 REGARDING CERTAIN
STEEL PRODUCTS**

:
:
:
:
:
:
:

**Rebuttal Statement of Silbo Industries, Inc. in Opposition to the
Exclusion Request of Weldbend Corporation**

Product: Carbon Steel Butt-Weld Pipe
Fittings Forgings

Of Counsel:

Max F. Schutzman, Esq.
Jeffrey S. Grimson, Esq.

GRUNFELD, DESIDERIO, LEBOWITZ,
SILVERMAN & KLESTADT LLP
245 Park Avenue
33rd Floor
New York, NY 10167
212-557-4000
- and -
1500 K Street, N.W.
Suite 975
Washington, DC 20005
202-783-6881

December 5, 2001

TABLE OF CONTENTS

I.	OVERVIEW	3
II.	THE ITC HAS ALWAYS CONSIDERED FINISHED AND UNFINISHED BUTT- WELD PIPE FITTINGS TO BE ONE “LIKE PRODUCT”	3
A.	THE 1986 CASE ON BUTT-WELD PIPE FITTINGS FROM BRAZIL AND TAIWAN.....	3
B.	THE 1987 CASE ON BUTT-WELD PIPE FITTINGS FROM JAPAN	4
C.	THE 1992 CASE ON BUTT-WELD PIPE FITTINGS FROM CHINA AND THAILAND.....	5
D.	THE 1995 CASE ON BUTT-WELD PIPE FITTINGS FROM FRANCE, INDIA, ISRAEL, MALAYSIA, KOREA, THAILAND, THE U.K. AND VENEZUELA	5
III.	THE DEPARTMENT OF COMMERCE EXAMINED BUTT-WELD PIPE FITTINGS FINISHING OPERATIONS AND FOUND THEM TO BE LEGALLY INSIGNIFICANT	6
IV.	WELDBEND’S STATED REASON FOR IMPORTING UNFINISHED FITTINGS LACKS CREDIBILITY	8
V.	OTHER DOMESTIC PRODUCERS OF UNFINISHED FITTINGS OPPOSE WELDBEND’S SUGGESTION	9
VI.	WELDBEND’S CLAIM THAT THE ITC’S FINDING OF INJURY ON UNFINISHED FITTINGS WAS MERE SPECULATION IS DISINGENUOUS	9
VII.	CONCLUSION	11

I. OVERVIEW

Silbo Industries, Inc. (“Silbo”) is an importer of carbon steel butt-weld pipe fittings and flanges included within the ITC’s Product Group 22. This Rebuttal Statement is limited to a discussion of the special exemption for so-called “fittings forgings” requested by Weldbend Corporation¹. For the following reasons, there is no basis to exclude Weldbend’s imported “fittings forgings” from the scope of Product Group 22.

II. THE ITC HAS ALWAYS CONSIDERED FINISHED AND UNFINISHED BUTT-WELD PIPE FITTINGS TO BE ONE “LIKE PRODUCT”

Weldbend would have the Commission believe that it is an “anomaly” and “makes no commercial sense” that carbon steel butt-weld pipe fitting forgings are included in this investigation while carbon steel flange forgings are not. Weldbend Exclusion Request at 6, fn. 5. However, the ITC has examined the issue of finished versus unfinished butt-weld pipe fittings on a number of occasions and has consistently considered these items to be a single like product.

A. The 1986 Case on Butt-Weld Pipe Fittings from Brazil and Taiwan

In the 1986 antidumping investigation of *Butt-Weld Pipe Fittings from Brazil and Taiwan*, the Commission considered whether the domestic industry included both finished and semi-finished butt-weld pipe fittings. Then, as now, Weldbend was the only party suggesting there was a separate “unfinished fittings” industry in the United States. USITC Pub. 1918 at 6

¹ “Request of Weldbend Corporation To Exclude From Import Relief Carbon Steel Butt-Weld Pipe Fitting Forgings (Included in HTSUS 7307.93.3000, 7307.93.9030),” dated November 13, 2001 (“Weldbend Exclusion Request”).

(December 1986). The Commission outlined the finishing steps involved in the production of butt-weld pipe fittings, including “shot blasting or other cleaning, machine beveling, boring and tapering, grinding, die stamping, inspecting, and painting.” *Id.* at A-5. These are exactly the operations listed by Weldbend in its Request for Exclusion at 2.²

The Commission Staff in that case conducted an analysis of the additional costs of these finishing operations and determined that they provided only about 14 percent of the value-added. *Id.* at A-6. On that basis, the Commission rejected Weldbend’s argument, stating:

We determine that unfinished butt-weld pipe fittings and finished butt-weld pipe fittings constitute a single “like” product. There is no evidence indicating that an unfinished fitting has any independent application or market other than for use in the manufacture of a finished fitting. Finishing operations do not significantly alter the function of a fitting. In addition, the weighted average cost attributable to finishing operations is only 14 percent of the total production cost.

Id. at 6-7.

B. The 1987 Case on Butt-Weld Pipe Fittings from Japan

In a 1987 case on *Butt-Weld Pipe Fittings from Japan*, the Commission adopted its 1986 finding of a single like product containing both unfinished and finished butt-weld pipe fittings. *Butt-Weld Pipe Fittings from Japan*, Inv. No. 731-TA-309, USITC Pub. 1943 at 5 (January 1987). The Commission also specifically included converters such as Weldbend within the definition of the domestic industry. *Id.*

² Weldbend describes its operations as machine-beveling, shot-blasting, boring and tapering, grinding, die stamping, painting and inspection. From the description it provided to the ITC in its Prehearing Brief at 6, “boring and tapering,” and “grinding,” have been added to the list of operations performed, while “removing die lines and surface imperfections,” and “removing oxidation and millscale,” have been eliminated.

C. The 1992 Case on Butt-Weld Pipe Fittings from China and Thailand

In 1992, the Commission again examined the issue of semi-finished fittings in *Carbon Steel Butt-Weld Pipe Fittings from China and Thailand*, and again concluded that the domestic like product included finished and unfinished fittings. The Staff Report explained that “the combination producers Hackney, Tube Forgings, Tube-Line, and Weldbend purchase and/or import rough-formed unfinished fittings which they bevel, bore, taper, grind, shot blast, die stamp, inspect, and paint.” Inv. Nos. 731-TA-520, USITC Pub. 2528 at I-10 (June 1992). The ITC Staff estimated that the processes of beveling, boring, tapering and any remaining steps constituted 14-29 percent value-added. *Id.*³ Based on this analysis, the Commission determined there was one domestic like product including both finished and unfinished fittings. *Id.* at 5. The Commission also determined that there was a “lack of any independent market for unfinished pipe fittings and {that} the identical production equipment {is} used in producing finished and unfinished pipe fittings.” *Id.*

In the 1992 case, Weldbend did not argue for a different like product determination. *Id.* at 5, n. 11.

D. The 1995 Case on Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the U.K., and Venezuela

The ITC reached a similar conclusion in a 1995 case on *Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, The Republic of Korea, Thailand, The United Kingdom, and Venezuela*, Inv. Nos. 701-TA-360 and 361 (Final) and 731-TA-688 through 695 (Final). The Commission found there was one like product “consisting of both finished and unfinished carbon

³ As explained at the ITC hearing by Silbo, the actual value added by Weldbend is more likely in the range of 5-10%, because the only operation typically performed by Weldbend in the United States is beveling.

steel butt-weld pipe fittings of less than 14 inches in inside diameter.” USITC Pub. 2870 at I-6 (April 1995). The Commission further determined that the domestic industry included both the integrated producers, and converters such as Weldbend. *Id.* at I-7. The Staff Report noted that “all imports of unfinished certain carbon steel butt-weld pipe fittings are believed to be machined into finished product by U.S. manufacturers.” *Id.* at II-47. No party argued for a separate like product determination for unfinished fittings.

For the foregoing reasons, it is clear that unfinished fittings were not included in this case by accident. Rather, these products were included (1) because they fall within the same tariff number as finished fittings, and (2) because the Commission has considered unfinished fittings to be within the same “like product” as finished fittings each time the Commission has examined this product since 1986.

III. THE DEPARTMENT OF COMMERCE EXAMINED THE FINISHING OPERATIONS OF BUTT-WELD PIPE FITTINGS AND FOUND THEM TO BE LEGALLY INSIGNIFICANT

The Department of Commerce (“DOC”) has also examined the issue of unfinished pipe fittings. In 1993, the DOC initiated an anticircumvention investigation relating to the processing of unfinished tees. In that case, a Thai company, Awaji Sangyo (Thailand) Company, Ltd., (“Awaji”), imported unfinished tees from China into Thailand and then performed certain operations in Thailand, including decapping the tee, heat treating, shot-blasting, beveling, cleaning, coating and marking. *Certain Carbon Steel Butt-Weld Pipe Fittings from the People’s Republic of China; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order*, 59 Fed. Reg. 62 (January 3, 1994). Awaji then exported the finished tees to the

United States as a product of Thailand not subject to the antidumping order on butt-weld pipe fittings from China.

During the course of an anti-circumvention proceeding, the Department of Commerce conducted an exhaustive analysis of the value-added resulting from the finishing operations. The Department found that the operations performed by Awaji in Thailand added approximately 18 percent of the value of the completed merchandise. *Certain Carbon Steel Butt-Weld Pipefittings from the People's Republic of China; Affirmative Final Determination of Circumvention of Antidumping Duty Order*, 59 Fed. Reg. 15155 (March 31, 1994).⁴ The Department concluded that this value-added was considered “small” under the anticircumvention statute, and rendered an affirmative final determination that Awaji had circumvented the Chinese antidumping order.

Weldbend describes its U.S. operations as follows: machine-beveling, shot-blasting, boring and tapering, grinding, die stamping, painting and inspection. Weldbend Exclusion Request at 2. In the anticircumvention case discussed above, Awaji performed the following operations in Thailand on the unfinished tees from China: decapping the tee, heat treating, shot-blasting, beveling, cleaning, coating and marking. In other words, Weldbend claims it performs basically the same operations on the “fittings forgings” that the Department of Commerce found to be legally insignificant in its anticircumvention inquiry.⁵

Weldbend was a party to the proceeding in the DOC anticircumvention case. In that case, however, Weldbend referred to these fittings as “unbeveled fittings” rather than the newly-

⁴ The DOC's analysis thus corroborated the Commission's earlier findings regarding the value-added in finishing operations.

⁵ Weldbend cites *Midwood Industries, Inc. v. United States*, 313 F. Supp. 951 (Cust. Ct.), *appeal dismissed*, 57 CCPA 141 (1970), as authority for the proposition that the finishing operations it performs on the imported forgings “substantially transform” those forgings into a new and different article of commerce according to customs law. Weldbend Exclusion Request at 2. Weldbend conveniently omits to mention U.S. Customs' longstanding rejection of the holding in *Midwood* (see, e.g., *Notice of Proposed Interpretation, etc.*, 63 Fed. Reg. 14751 (March 26, 1998); T.D. 00-15, 65 Fed. Reg. 13827 (March 14, 2000), vacated in *Boltex Mfg. Co. v. United States*, 140 F. Supp. 2d 1339 (CIT 2000); and *Proposed Revocation or Modification of Ruling Letters Relating to the Country of Origin of Pipe Fittings and Flanges*, 35 Cust. Bull. No. 47 at 35, et seq. (November 21, 2001)).

coined term “fittings forgings.” *See* Response of Weldbend Corporation to Questionnaire at 2 (November 30, 1993). The reason for this change is obvious: Weldbend wishes to liken unfinished butt-weld pipe fitting with flange forgings, products specifically excluded from this 201 case.

Weldbend described its operations in the 1993 questionnaire as follows: “For a few specialty types or sizes of fittings, Weldbend purchases unbeveled fittings from U.S. suppliers and bevels and processes those fittings in its Argo plant.” *Id.* at 1-2. Weldbend further noted that, as of 1993, it did not import such unbeveled fittings. This means that, sometime between 1993 and the present, Weldbend began purchasing from import sources at the expense of the domestic industry. In the instant case, however, Weldbend admits it is an importer of these products, and characterizes them as “essential,” and “actually crucial to the domestic industry’s ability to compete.” Weldbend Exclusion Request at 8-9. Weldbend would have the TPSC believe that shifting from domestic to imported product will be beneficial for the domestic industry. This unusual logic highlights the fundamental hypocrisy in Weldbend’s position. Pointedly, there are no “good imports” and “bad imports,” as Weldbend suggests. The TPSC must consider the impact of all imports together, without regard to the self-serving distinction created by Weldbend.

IV. WELDBEND’S STATED REASON FOR IMPORTING UNFINISHED FITTINGS LACKS CREDIBILITY

Weldbend explains that it must import unfinished fittings because of its inability to purchase sufficient quantities domestically. One reason for this, states Weldbend, is that the domestic unfinished fittings producers are “too small to supply Weldbend with the substantial

volume and consistent quality that Weldbend, as one of the largest producers in the United States, requires.” *Id.* at 7. On the other hand, Weldbend rationalizes having to purchase imported unfinished fittings “because the market demand for the corresponding butt-weld pipe fitting is insufficient to warrant the required investment in plant and forging machinery.” *Id.* These contradictory statements again highlight that Weldbend’s fundamental objective in this 201 case is not to promote any healthy domestic industry but, rather, to protect its own ability to purchase imported product at the expense of both the domestic industry and other importers.

V. OTHER DOMESTIC PRODUCERS OF UNFINISHED FITTINGS OPPOSE WELDBEND’S SUGGESTION

At the October 1, 2001 ITC hearing, representatives of three domestic manufacturers (Mills Iron Works, Trinity Fitting Group, all Tube Forgings of America) explicitly opposed Weldbend’s suggestion that unfinished fittings be considered separately from finished fittings. Weldbend thus stands alone among its domestic manufacturer-compatriots in advocating a position which, it admits, is designed not to support its ability to manufacture unfinished fittings in the United States, but its practice of importing such fittings at the expense of domestic producers and importers of finished fittings.

VI. WELDBEND’S CLAIM THAT THE ITC’S FINDING OF INJURY ON UNFINISHED FITTINGS WAS MERE SPECULATION IS DISINGENUOUS

Weldbend argues that the ITC should have made a negative injury finding on “fittings forgings” due to the alleged lack of available data, noting there are no official import statistics for fitting forgings alone, because they are combined for tariff purposes with finished fittings.

Id. at 5-6. Weldbend's argument that the President should therefore reject the ITC's recommendation of import relief as "speculative," however, goes too far. As explained above, the Commission followed 15 years of precedent in treating unfinished and finished fittings as a single like product. Furthermore, as Weldbend admits, unfinished and finished butt-weld pipe fittings are classified within the same HTS number. *Id.* at 5. Contrary to Weldbend's claim, the Commission's data **includes** the so-called "fittings forgings" industry.

As with many of the 33 product groups for which the ITC collected information in this case, Group 22 (of which butt-weld pipe fittings, finished and unfinished, are a part) includes a broad variety of products. That the Commission did not have data on the sub-HTS-number basis requested by Weldbend does not render the Commission's decision "speculative." On the contrary, the data before the Commission comports with the Commission's past treatment of finished and unfinished fittings as a single product.

While Weldbend asserts that the Commission speculated by basing its injury decision on the aggregated data, it is instructive to examine the "evidence" that Weldbend provides for the absence of such injury. Weldbend asks the Commission simply to accept its assertion that "there is no basis on which to determine whether forging imports have caused serious injury." *Id.* at 6. Weldbend thus requests that the TPSC ignore the record evidence collected in the ITC proceeding, and the expressed opposition of the other domestic producers, in favor of Weldbend's unsubstantiated claim that its imports of "fittings forgings" do not injure the domestic industry. Were the TPSC to accept this type of self-serving conclusion as evidence, then the TPSC would engage in the selfsame speculation Weldbend opposes.

VII. CONCLUSION

If the TPSC ultimately recommends a specific remedy for those carbon and alloy steel flanges, fittings and tool joints included within Product Category 22 (a conclusion which Silbo opposes), then there is no basis in law or fact for a special exclusion for Weldbend's imports of "fittings forgings."

Respectfully submitted,

Max F. Schutzman
Jeffrey S. Grimson

GRUNFELD, DESIDERIO, LEBOWITZ,
SILVERMAN & KLESTADT LLP

Counsel to Silbo Industries, Inc.